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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/598,210	06/21/2000	Johan Nilsson	040071-173	8106

21839 7590 10/08/2003

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EXAMINER

LAMARRE, GUY J

ART UNIT	PAPER NUMBER
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2133

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/598,210

Applicant(s)

NILSSON, JOHAN

Examiner

Guy J. Lamarre, P.E.

Art Unit

2133

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 4,8,9,13,17 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Response to Amendment**

1. This office action is in response to Applicants' amendment of 23 July 2003.
  - 1.1 Claims 1-18 remain pending.
  - 1.2 The prior art rejection of record, as set forth in the office action of 4/24/2003, is maintained in response to Applicants' amendment of 23 July 2003.
  - 1.3 The indicated allowability of Claims 4, 8, 9, 13, 17 and 18, as set forth in the office action of 4/24/2003, is maintained in response to Applicants' amendment of 23 July 2003.
  - 1.4 The objection of record to the drawings, as set forth in the office action of 4/24/2003, is maintained in response to Applicants' amendment of 22 July 2003.

### **Response to Arguments**

2. Applicants' arguments of 23 July 2003 have been fully considered, but are not persuasive.

## **REMARKS**

- 2.1 In response to **Claim 4**, said **Claim** is similar to **Claim 13** that was objected to as dependent on base rejected claim: Thus **Claim 4** is also objected to as such.
- 2.2 In response to **Claims 1-3, 5-7, 10-12 and 14-16**, Applicants argue that the prior art of record does not teach: use of "a previously calculated BER, and that only a preset or static or fixed BER is chosen." Examiner disagrees, and notes that "a preset or static or fixed BER" is equivalent to "a previously calculated BER." Examiner also notes that at outset of BER computation, there is no "previously calculated BER" thereby highlighting the fact that "a preset or static or fixed BER" is equivalent to "a previously calculated BER."

Therefore, **Abe** discloses such "preset or static or fixed BER" or "previously calculated BER," as conceded by Applicants.

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**2.3** In response to Applicants' contention of improper hindsight, Examiner disagrees, and notes that it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### **Claim Rejections - 35 USC § 112**

**3.** The following is a quotation of the first and **second** paragraphs of 35 U.S.C. 112:

1. The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**3.1** **Claims 6 and 15** are rejected under the **first paragraph of 35 U.S.C. 112** for failing to describe the manner in which 'the error correction ... includes Viterbi, processing or decoding.' Specifically, no Viterbi processing or decoding is performed.

### **Claim Rejections - 35 USC § 101**

**4.** 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**4.1** Claims 1-9 are rejected under 35 U.S.C. 101 as claiming a mathematical formula or algorithm. Applicant is advised to modify limitations of said claims as being incorporated or embedded in hardware or readable machine medium.

### **Conclusion**

**5.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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**5.0** This action is **not made final** because the new rejections under 35 USC 101 and 112 are not necessitated by Applicants' amendment.

**5.1** Any response to this action should be mailed to:

Commissioner of Patents and Trademarks, Washington, D.C. 20231

**or faxed to:**

(703) 872-9306, (for After-Final communications and for formal communications intended for entry),

(703) 746-5463 (for informal or draft communications, please label "PROPOSED" or "DRAFT").

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Fourth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Guy J. Lamarre, P.E., whose telephone number is (703) 305-0755. The examiner can normally be reached on Monday to Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert De Cady, can be reached on (703) 305-9595.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Guy J. Lamarre, P.E.



Patent Examiner

5 October 2003

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